

## **EXHIBIT 2**

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF NEW YORK: TRIAL TERM PART 3  
3 - - - - - X  
4 JEFFREY SIMPSON, individually and derivatively,  
5 as managing member of JJ ARCH LLC, suing  
6 derivatively as managing member of ARCH REAL  
7 ESTATE HOLDINGS LLC and JJ ARCH LLC,

8 Plaintiff,  
9 INDEX NO.  
10 - against - 158055/23

11 JARED CHASSEN and FIRST REPUBLIC BANK,

12 Defendants.  
13 - - - - - X  
14 JARED CHASSEN, individually and derivatively,  
15 as managing member of JJ ARCH LLC, suing  
16 derivatively as managing member of ARCH REAL  
17 ESTATE HOLDINGS LLC and JJ ARCH LLC

18 Counterclaim-Plaintiff  
19 - against -

20 JEFFREY SIMPSON and YJ SIMCO LLC,

21 Counterclaim-Defendants,  
22 and

23 JJ ARCH LLC and ARCH REAL ESTATE HOLDINGS LLC  
24 - - - - - X  
25 608941 NJ INC.,

Plaintiff,

26 - against -

27 JEFFREY SIMPSON, JJ ARCH LLC and ARCH REAL  
28 ESTATE HOLDINGS LLC,

29 Defendants,

30 and

31 ARCH REAL ESTATE HOLDINGS LLC,

32 Nominal Defendant.

33 - - - - - X

34 25

## Appearances

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4 PROCEEDINGS

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## 8 APPEARANCES:

9                   ALTMAN & COMPANY P.C.  
0                   Attorneys for Plaintiff Jeffrey Simpson  
1                   P.O. Box 590  
1                   Southampton, New York 11969  
1                   BY:     STEVEN ALTMAN, ESO.

13 SCHWARTZ LAW FIRM PLLC  
14 Attorneys for Defendant Jared Chassen  
15 150 Broadway, Suite 701  
New York, New York 10038  
16 BY: ALLEN SCHWARTZ, ESO.

16 HAYNES and BOONE LLP  
17 Attorneys for Plaintiff 608941 NJ INC. (Oak)  
30 Rockefeller Plaza - 26th Floor  
18 New York, New York 10112  
BY: LESLIE C. THORNE, ESQ.  
19 AISHLINN BOTTINI, ESO.

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Appearances

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3           Appearing Microsoft Teams  
4           POLSINELLI PC  
5           Attorneys for Arch Real Estate Holdings  
6           600 Third Avenue - 42nd Floor  
7           New York, New York 10016  
8           BY: AARON ZERYKIER, ESQ.

9

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11           Also Present:  
12           WESTERMAN BALL EDERER MILLER  
13           ZUCKER & SHARFSTEIN LLP  
14           Attorneys for Non-Parties  
15           Adam Peldman and Jonathan Peldman  
16           1201 RXR Plaza  
17           Uniondale, New York 11556  
18           BY: JEFFREY MILLER, ESQ.

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26           Bonnie Piccirillo  
27           Official Court Reporter

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30           Bonnie Piccirillo - Official Court Reporter

Proceedings

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2                   THE COURT: Good morning, everyone. We have a lot  
3                   to accomplish in a relatively compressed time. I'm going to  
4                   be more strict than I normally in on time because we have to  
5                   deal with two motions in this case, and I have hearings back  
6                   to back for the rest of the day.

7                   So, for each motion I'm going to go with  
8                   twenty minutes a side, and then we'll move from there.

9                   So, before we get started, let's do appearances  
09:35:23 10                   beginning with the plaintiff.

11                   MR. ALTMAN: Good morning, your Honor. Steven  
12                   Altman for the plaintiff, Jeffrey Simpson.

13                   MR. SCHWARTZ: Good morning, your Honor. Allen  
14                   Schwartz on behalf of Jared Chassen.

15                   MS. THORNE: Leslie Thorne and Aishlinn Bottini for  
16                   608941 NJ, Inc., also referred to as Oak.

17                   MR. ZERYKIER: And Aaron Zerykier for Arch Real  
18                   Estate Holdings online.

19                   THE COURT: Your affiliation?

09:36:20 20                   MR. ZERYKIER: I'm with Polsinelli PC.

21                   MR. MEISTER: Good morning, your Honor. Stephen  
22                   Meister, remotely, Meister Seelig for Oak, as well.

23                   THE COURT: And we have another counselor in the  
24                   courtroom.

25                   MR. MILLER: Good morning, your Honor. My name is  
                          Bonnie Piccirillo - Official Court Reporter

Proceedings

1       Jeffrey Miller from Westerman Ball. I sent a letter into  
2       the Court yesterday. I represent --

3               THE COURT: Can you come a little closer so the  
4       court reporter can hear you.

5               MR. MILLER: Sure. I represent Adam Peldman and  
6       Jonathan Peldman who are the largest investors in one  
7       property that's being cut up in the dispute.

8               THE COURT: I've seen the letter, and I understand  
9       where it fits in; but at this point, your client hasn't  
09:37:30 10      intervened or sued anybody, so it's relevant -- I mean,  
11      it's good context for me to have while these two folks fight  
12      with each other. It is good for all of us to remember that  
13      their conflicts may affect third parties who if they haven't  
14      already done so, could be lobbing claims at them, as well.

15               I, certainly, understand that and I, certainly,  
16      hope that the two gentlemen at the center of this understand  
17      that as well.

18               MR. MILLER: I appreciate that, and we will move to  
19      intervene if necessary.

09:38:07 20               THE COURT: I don't know that it will be an  
21      intervention in this case as opposed to a separate one.  
22      This case doesn't need more complexity.

23               MR. MILLER: I know. I understand. We're just  
24      here to protect the rights of my client and to be heard so  
25      nothing happened today that would adversely prejudice them.

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1                   THE COURT: Well, it might. Not intentionally, but  
2                   you can't protect the rights of your client unless you  
3                   are -- you have a stake in the litigation and you enter an  
4                   appearance; but I'm not suggesting I'm going to ignore the  
5                   fact that one of the many entities that's at issue in this  
6                   fight today involves real human beings who are at the wrong  
7                   end of the stick.

8                   So, I certainly understand it, but you should not  
9                   feel like the only recourse you have is to write letters  
09:39:09 10                   from the side in this case. If your client has claims it  
11                   thinks it needs to assert to have a judge really taking it  
12                   more specifically into account, then you know how to do  
13                   that.

14                   MR. MILLER: I understand. We plan to do that. We  
15                   got retained and wanted to send a letter because we knew a  
16                   TRO hearing was happening. We will be doing that.

17                   THE COURT: I think it was probably a smart move,  
18                   but nobody suggested I shouldn't read it so I did. It's a  
19                   good reminder to everyone that these -- keeping the damage  
09:39:49 20                   to these two combatants or three, perhaps, is not realistic  
21                   and that there are other investors here. I've heard from  
22                   other investors from time to time, so I do appreciate the  
23                   letter, but as I said, and I -- just in dealing between  
24                   these two parties who also have a stake in the same  
25                   property, I guess, the interests of that property are going

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1 to be part of the discussion today. But I wouldn't count on  
2 the sort of non-appearing non-party, non-intervenor status  
3 as I can't really give any relief to your clients directly.  
4 I can only give relief to the parties in front of me.

5 MR. MILLER: I appreciate that.

6 THE COURT: But I appreciate the letter.

7 All right, anyone else that I haven't had  
8 appearance from on the line? I just ask the folks on the  
9 line to remain on mute unless and until you're ready to  
09:40:56 10 speak so we can keep the background noise to a minimum.

11 So, again, as I say, twenty minutes a side.

12 The first motion -- we'll take in the order they  
13 were filed -- is an order to show cause with a TRO filed by  
14 Mr. Chassen. So, the main agenda item on that one is there  
15 is a request for a TRO relief, relief pending the  
16 preliminary injunction hearing.

17 So, with most orders to show cause, the main agenda  
18 items are setting the schedule for a hearing on the broader  
19 request for a preliminary injunction relief in this case, an  
09:41:50 20 appointment of a receiver; but, substantively, my focus  
21 today is on the TRO.

22 MR. SCHWARTZ: Yes, your Honor.

23 THE COURT: And I have read all the stuff.

24 MR. SCHWARTZ: Thank you, your Honor.

25 Good morning, your Honor. So, as your Honor just

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1       noted, we are here today seeking a temporary restraining  
2       order in connection with the motion for a preliminary  
3       injunction and the appointment of a temporary receiver. If  
4       the temporary receiver is appointed, some of the injunctive  
5       relief -- the preliminary injunctive relief that we're  
6       requesting would be no longer potentially necessary if the  
7       receiver were put in place.

8                   Your Honor, with respect to the request for the  
9       temporary restraining order, Mr. Chassen seeks an injunction  
09:42:58 10       to bar Mr. Simpson from transferring JJ Arch's assets, from  
11       encumbering JJ Arch's assets, from taking distributions for  
12       himself from JJ Arch's assets until this motion can be  
13       heard.

14                  It also seeks access to JJ Arch's bank accounts,  
15       which Mr. Simpson despite this Court's orders has not given  
16       Mr. Chassen full access to and also full access to the books  
17       and records of businesses that Mr. Chassen has still  
18       deprived -- Mr. Simpson has deprived Mr. Chassen of viewing.

19                  As your Honor knows, the standard is for an  
09:43:38 20       injunction is likely of the success, irreparable injury,  
21       balancing of the equities; but for a TRO the linchpin under  
22       CPLR 6313 is the threat of irreparable injury before the  
23       Court can hear the motion on the merits. And here, your  
24       Honor, Chassen has established each of these elements.

25                  First, your Honor, Mr. Chassen has demonstrated

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1       that Mr. Simpson is actively attempting to take JJ Arch's  
2       assets because for one thing, Mr. Simpson has touted this.  
3       He has told Mr. Chassen that "I have the full and exclusive  
4       right to issue capital calls, and you owe 1.2 million so I  
5       can take whatever cash I need without your consent."

6                   That e-mail is available at NYSCEF number 492.

7                   In his affidavit that he submitted just a couple of  
8       days ago -- it's at NYSCEF 527 at paragraph 30 -- he tells  
9       the Court, "I would like to and intend to sell the 225 Head  
09:44:48 10       of Pond Road property to, quote, alleviate a 1.2 million  
11       member loan that Chassen owes me."

12                  He's actively selling company assets, your Honor,  
13       on his personal Facebook page, including a vehicle, an  
14       antique vehicle that under a contract Mr. Chassen, he is  
15       obligated to convey to Mr. Chassen.

16                  THE COURT: I do object to something being called  
17       an antique that was sold in the year I was in law school,  
18       but go ahead.

19                  MR. SCHWARTZ: We've submitted evidence, your  
09:45:32 20       Honor, that he has already taken thousands of dollars.  
21       That's evidence at NYSCEF 493 and 510.

22                  And he's been paying his own personal legal bills  
23       from JJ Arch money funds without posting the undertaking  
24       required by Section 10.3 of the JJ Arch Operating Agreement,  
25       which requires undertaking be posted to the company in the

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1       event that Mr. Simpson is found to have acted with gross  
2       negligence or --

3               THE COURT: Do you have evidence that they're using  
4       JJ Arch money to pay counsel because they deny that?

5               MR. SCHWARTZ: We have NYSCEF number 518. We have  
6       evidence of wire transfers going out to the Mr. Simpson's  
7       counsel.

8               THE COURT: From Arch accounts?

9               MR. SCHWARTZ: Yes, at NYSCEF number 518.

09:46:16 10               THE COURT: Well, you make the point that if they  
11       are Arch's counsel, they can be paid by Arch. I think the  
12       point you make in your motion is he shouldn't be able to pay  
13       his personal counsel.

14               So putting aside the subsidiary request you have  
15       for disqualification, if assuming Mr. Altman is  
16       simultaneously representing Mr. Simpson personally and also  
17       JJ Arch and assuming both of those representations are  
18       appropriate, wouldn't it be fine for JJ Arch to pay the JJ  
19       Arch part as long as Mr. Simpson is paying the Mr. Simpson  
09:47:01 20       part?

21               MR. SCHWARTZ: If that were in fact happening, your  
22       Honor and that was actually being allocated in any  
23       verifiable way potentially that might be appropriate, but  
24       what isn't appropriate is to transfer in this case that  
25       we -- the evidence that we've submitted at 518, payments to

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1       Mr. Israel who is representing -- purported to represent  
2       both Mr. Simpson and JJ Arch and post no undertaking  
3       whatsoever and, basically, getting payment directly from the  
4       company for that.

5                   So, going on to other -- this is not --

6                   THE COURT: And, I assume, most of the basis for  
7       your -- the most significant relief you're seeking is to  
8       basically stop asset sales?

9                   MR. SCHWARTZ: Correct, your Honor.

09:48:00 10                   THE COURT: And, I assume, that's based on your  
11       client's consent rights under the Operating Agreement?

12                   MR. SCHWARTZ: It's based on the consent rights  
13       under the Operating Agreement in part; but it's also based  
14       on an August 1, 2023, contract that Mr. Simpson and  
15       Mr. Chassen entered into that is the subject of some of  
16       Mr. Chassen's counterclaims in this case, which Mr. Chassen  
17       seeks specific performance and under which certain assets  
18       were to be conveyed. There's going to be a division of some  
19       of the assets, and I would like to actually --

09:48:37 20                   THE COURT: Well, I will tell you, look, that's  
21       kind a new one. I thought I had heard everything going on  
22       in this case and that contract, I don't know that I fully  
23       had gotten briefed on before; but that one there's disputes  
24       about, right? Whether it was ever finalized, whether it's  
25       applicable. There is no dispute about the Operating

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1       Agreement part, which, you know, again, your motion covers a  
2       lot of territory and I'm trying to just take it piece by  
3       piece.

4               The largest piece, at least in terms of  
5       significance and also in terms of third-party investors, is  
6       the JJ Arch business piece; and that one, I assume, the  
7       dispute is you're claiming, well, look, under the agreement  
8       we have consent rights as to a bunch of things that are  
9       called major decisions, which is extremely broadly defined.

09:49:40 10       They say, Well, you lost those because -- your client lost  
11       those and really isn't part of JJ Arch anymore because of  
12       various defaults, which have also not been adjudicated;  
13       right?

14               MR. SCHWARTZ: Yes, your Honor, but in terms of  
15       talking about probability of success on the merits with  
16       these claims, I think it is important that I address each of  
17       these claims because I think if I explain -- if I could  
18       explain to the Court what this member loan purports to say  
19       and how it is -- and the ways in which it is, frankly, a  
09:50:18 20       pretext to loot company assets.

21               THE COURT: By "member loan" you're talking about  
22       their argument for why Mr. Chassen is basically out?

23               MR. SCHWARTZ: Correct.

24               THE COURT: Because he was some sort of a capital  
25       call or a deficiency in the capital accounts, one or both of

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1       those things; and that's their pathway to saying, Well,  
2       whatever rights you might have had as a JJ Arch member, Mr.  
3       Chassen, those are over because of those issues?

4                    MR. SCHWARTZ: Correct, and so I think it is  
5        important that I walk the Court through all that. That  
6        capital -- that purported capital call we labeled -- well,  
7        we've labeled the fraudulent capital call in our amended  
8        complaint where we seek to declare it null and void and  
9        ultra vires and where -- it is important to note that  
09:51:14 10        capital call was issued on August 31st, the day before  
11        Mr. Simpson did his second purported termination of  
12        Mr. Chassen.

13                   I think the capital call and the contract are  
14        intertwined, so if I can just quickly or as quickly as I can  
15        address both those things to the court.

16                   THE COURT: Slowly, but still quickly.

17                   MR. SCHWARTZ: Thank you, your Honor.

18                   Your Honor, in the August 1st, 2023, contract,  
19        which is at NYSCEF number 509, Simpson and Chassen agreed  
09:51:42 20        that Chassen would be bought out of the Rever Motors  
21        business for \$675,938.35, and Chassen would own the other  
22        assets 50/50 with a company called YJ Simco that was owned  
23        by Mr. Simpson and his wife, with Chassen entitled to  
24        co-manage the real property known as 225 Head of Pond,  
25        Watermill, New York.

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1 THE COURT: Head of Pound?

2 MR. SCHWARTZ: Head of Pond.

3 THE COURT: And this is the August 1 Agreement?

4 MR. SCHWARTZ: This is the August 1 Agreement,  
5 correct, your Honor, and that property is owned by this  
6 entity 225 HPR LLC.

7 Chassen under the contract was also to receive  
8 three antique vehicles that he paid for to Rever Motors that  
9 were listed on Schedule A of the Agreement, and the initial  
09:52:33 10 payment to Chassen that Simpson was to make \$500,000 was to  
11 be made from a loan through Connect One Bank that Simpson  
12 was to obtain in the amount of \$995,000 and that Chassen was  
13 to guarantee half of with Simpson responsible for making  
14 payments on the loan.

15 Exhibit B of that contract, your Honor, at NYSCEF  
16 509, provides a breakdown for how Simpson and Chassen  
17 reached the amount of \$675,000 -- \$675,938.35. The  
18 calculation there, your Honor, shows the actual buyout was  
19 \$1,186,329.84.

09:53:20 20 It then broke down further and added a repayment of  
21 a loan that -- to Simpson by Chassen of \$50,000; and then it  
22 deducted Simpson's repayment of half of a personal line of  
23 credit they had jointly taken out, as well as agreed upon  
24 balances of payments for purposes of this personal contract  
25 for the entity 550 JJ NY LLC, 225 HPR LLC and another

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1 property called 80H Schwenks, S-C-H-W-E-N-K-S.

2 Exhibit B of the contract, your Honor, also  
3 incorporated that they had already split 50/50 of the  
4 proceeds of a sale of that 80H Schwenks property in 2023.

5 Just after entering this August 1st contract,  
6 Mr. Simpson, he repudiated it by refusing to close the loan  
7 with Connect One Bank that had already been approved on  
8 July 27, 2023, before the contract was entered.

9 This is shown in NYSCEF 517. The e-mails attached  
09:54:30 10 that are in NYSCEF 517 from the bank, the bank tells both  
11 Chassen and Simpson --

12 THE COURT: What was going to be the borrower  
13 entity in the loan?

14 MR. SCHWARTZ: Simpson.

15 THE COURT: Simpson personally?

16 MR. SCHWARTZ: And Chassen was going to guaranty  
17 half.

18 THE COURT: Right, and the bank wanted proof of  
19 liquidity for both individuals?

09:54:49 20 MR. SCHWARTZ: And proof of liquidity had been  
21 provided, your Honor, because the loan was approved before  
22 they entered the contract. So, this is not a situation --

23 THE COURT: Did your client have the liquidity that  
24 was required?

25 MR. SCHWARTZ: Yes, he did, your Honor.

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1                   THE COURT: Despite -- I mean, I've seen some  
2                   e-mails back and forth to suggest otherwise.

3                   MR. SCHWARTZ: He had it and got approved. He had  
4                   liquidity and he was approved for the loan. Mr. Simpson's  
5                   claim he didn't have the liquidity are based on his  
6                   statements that Mr. Chassen made to Mr. Simpson, that  
7                   Mr. Chassen did not want Mr. Simpson to know what he did or  
8                   didn't have. He had the funds to be able to get the loan --

9                   THE COURT: In the e-mail that they put in their  
09:55:30 10                   papers as not genuine?

11                   MR. SCHWARTZ: The e-mail from Chassen to Simpson?

12                   THE COURT: Saying he had \$25,000 in the bank.

13                   MR. SCHWARTZ: It is a genuine e-mail. Doesn't  
14                   mean that the truth of the statement in the e-mail -- what  
15                   he was telling Mr. Simpson was true. He did not want  
16                   Mr. Simpson to know -- I mean, this is not in the record,  
17                   your Honor, but he -- and we'll be happy to respond to this,  
18                   but he did not want Mr. Simpson to know his, like, the state  
19                   of his finance at that time.

09:55:59 20                   THE COURT: Did he want the lender to know?

21                   MR. SCHWARTZ: He got approved. He gave the lender  
22                   his full information. That will all be backed up. The  
23                   lender approved the loan based on the information he  
24                   submitted. And it is important to know, your Honor, this  
25                   loan was approved before they entered the contract, so it

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1       wasn't as if this was an open issue.

2                   THE COURT: So, what happened? Why did this break  
3                   down?

4                   MR. SCHWARTZ: So, what happened, your Honor, is  
5                   that as -- if you scroll through the e-mails in NYSCEF  
6                   number 517, the bank then tells Mr. Simpson and Mr. Chassen  
7                   they had accidentally failed to include a provision that had  
8                   been in their previous loan, that they had accidentally  
9                   failed to include it and that they wanted them to resign the  
09:56:40 10                   documents with that provision. That provision was provision  
11                   saying they couldn't take other unsecured lines of credit;  
12                   and in the prior loan they had taken out a personal line of  
13                   credit that they had taken out previously, that provision  
14                   was there so the bank asked them to resign.

15                   THE COURT: Well, that could be a material change,  
16                   right? Because if you're operating lots of other  
17                   businesses, promising not to take any other lines of credit,  
18                   that's not an insignificant difference; is it?

19                   MR. SCHWARTZ: But it was the exact same provision  
09:57:09 20                   that was in their prior loan, your Honor.

21                   THE COURT: May be true, but for this contract, it  
22                   wasn't in the loan papers for this contract, right,  
23                   originally?

24                   MR. SCHWARTZ: It wasn't in the loan papers that  
25                   the bank had sent. Your Honor, Mr. Simpson's reasons for

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1 refusing to close the loan are abundantly clear.

2 If your Honor looks at NYSCEF 581, a back and forth  
3 between Simpson and Chassen talking about his -- how upset  
4 he was about Oak's proposal that Mr. Chassen take over  
5 JJ Arch. As we've submitted in our papers, we've attached  
6 the e-mails showing the back and forth where Mr. Simpson  
7 reaches out to Oak, which suggests Oak should take over  
8 JJ Arch in exchange for various benefits to Mr. Simpson; and  
9 then Oak responds that they would rather have Mr. Chassen be  
09:58:13 10 placed in charge and Mr. Simpson leave the company.

11 And after that, those e-mails which in July  
12 Mr. Simpson goes if you see it -- you could see in the  
13 e-mails Mr. Simpson's back and forth as he struggles to how  
14 he accept that or how he's going to deal with that and his  
15 emotional turmoil I guess is the best way to state it.

16 These e-mails at NYSCEF 581 show that the real  
17 reason was that he was upset about, about all of that.

18 He writes to him on August 3rd, which is when he  
19 was supposed to close, he says: Quote, "Interesting how you  
09:58:55 20 demand 500K per year when the value you have brought has  
21 crashed down like a deck of cards with an insolvent partner.  
22 They put you in a proposed agreements that makes you a MM  
23 --" a managing member -- "of a situation I would never  
24 approve, nor are you capable. There are implications to you  
25 for taking these positions against me in JJ. You are not in

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1 control and going against me has ramifications. You have  
2 swallowed your own words, just like Michael. No, I don't  
3 trust you and it isn't repairable any time soon. For that,  
4 I do not feel sympathy for your cash position, and I am not  
5 putting myself in further debt for your inabilities at RM.  
6 The day you stepped aside, it has done better since the day  
7 we started it."

8 "All bets are off. No buyout apart from Rever. No  
9 distributions at Schwenks that is 50/50. Your cars will be  
09:59:58 10 delivered to your house. I don't want to see those things  
11 ever again," et cetera, et cetera.

12 He goes on to say "This is despicable how you take  
13 advantage of me. It is over. I'll be much happier in life  
14 not being around you."

15 So, your Honor, it is pretty clear the reason  
16 Mr. Simpson refused to close on this August 1st contract  
17 based on this August 3rd e-mail had to do with the events  
18 surrounding Oak's proposal and Oak's -- and Oak's desire to  
19 have -- that Mr. Simpson would leave the company and how  
10:00:32 20 infuriated he was at Mr. Chassen about that proposal.

21 THE COURT: I mean, putting aside the merits of it,  
22 that is a pretty significant change in the landscape; isn't  
23 it? I mean, the obvious one contract which at least it  
24 sounds like the understanding at that time was Simpson would  
25 continue to run JJ Arch and this was, you know, a division

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1 of certain other assets. And then when we next look at it,  
2 you say everything is the same except Simpson is out.  
3 That's kind of a --

4 MR. SCHWARTZ: Simpson wasn't out at that point,  
5 your Honor, and the proposal from Oak was made in July. If  
6 your Honor looks further in the e-mails back in the e-mail  
7 chains, you see an e-mail from Mr. Simon July 25th, 2023,  
8 talk saying that when Michael sent you the, quote, "puppet  
9 proposal and you felt he put you in a bad spot, why did you  
10 not chastise him over e-mail in front of me and everybody  
11 else to say what the fuck are you doing? You don't need to  
12 use my style," you know, et cetera, et cetera.

13 So, this is not something that happened after the  
14 contract. This is stuff that happened before the contract.  
15 The purpose of the contract was to figure out a way for them  
16 to part ways in terms of and resolve certain disputes over  
17 assets. This is not that --

18 THE COURT: All right, we're coming close to  
19 twenty minutes. I want to make sure you get -- I mean, I  
10:01:59 20 get the August 1 Agreement.

21 What about the rest of your relief?

22 MR. SCHWARTZ: So, your Honor, I just would like  
23 the walk through, if I can, the, quote, purported member  
24 loan.

25 So, Mr. Simpson purports to terminate Chassen by

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1       August 5th. That's when those events happened. And then  
2       before he again terminates him on September 1, 2023, he  
3       issues a retroactive capital call to JJ Arch that is  
4       available at NYSCEF 519.

5                   Your Honor, the capital call, basically, takes some  
6       of the calculations from this contract and then -- this  
7       personal contract, but then whole ignores the rest of the  
8       contract's provisions. But even if the contract had never  
9       existed, your Honor, the capital --

10:02:49 10                   THE COURT: Which contract are we talking about?

11                   MR. SCHWARTZ: August 1st contract.

12                   THE COURT: The capital call is under the Operating  
13       Agreement, right?

14                   MR. SCHWARTZ: So, the capital call, basically,  
15       takes the breakdown, Exhibit B of the contract, about what  
16       was owed, allocating different amounts that had been  
17       potentially contributed or not contributed to the various  
18       subsidiary entities and then uses those as a -- as a basis  
19       to issue a retroactive capital call to Mr. Chassen.

10:03:21 20                   THE COURT: Right, I get it; but the capital call,  
21       itself, is under the Operating Agreement. You're saying it  
22       is based on the relative capital contributions reflected in  
23       this Agreement?

24                   MR. SCHWARTZ: Correct, correct, and also the  
25       personal line of credit, amongst other things. I would like

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1 to walk your Honor through that.

2 First of all, your Honor, if your Honor looks at  
3 the Operating Agreements for these entities, 1640 Montauk,  
4 HPR LLC, JJ 550, New York LLC, they all say JJ Arch shall  
5 have no obligation to make any further capital contributions  
6 to these entities, okay, number one.

7 So, JJ Arch did not have any capital obligations to  
8 these entities. Even more importantly, none of these  
9 entities ever even issued a capital call to JJ Arch. So  
10 even if JJ Arch did have an obligation, they never actually  
11 got a capital call from any of these entities.

12 If your Honor looks at Section 4.2 of the JJ Arch  
13 Operating Agreement, it says it allows him to issue a  
14 capital call to meet, quote, general and administrative  
15 expenses. It doesn't allow him to issue capital calls for  
16 the expenses of other entities that JJ Arch had no capital  
17 obligations to and who never even issued capital calls to  
18 JJ Arch. It, also, doesn't authorize him to issue  
19 retroactive capital calls.

20 The same is true with the 146 East 89th Street  
21 property which we spoke with your Honor -- we discussed at  
22 the beginning of the case which has other investors.  
23 That -- those entities 146 East 89th Borrower 1 LLC, 146  
24 East 89th Borrower 2, 146 East 89th Street Borrower 3 LLC,  
25 all of those Operating Agreements under Section 3.2 of those

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1       Operating Agreements provide that JJ Arch should not have a  
2       capital call obligations to those entities. They may issue  
3       capital calls to the members of those entities; and if they  
4       don't answer those capital calls or respond, then JJ Arch  
5       would have the right to loan money to those entities.

6                   Again, no capital call has ever been issued to any  
7       of those entities. There's no -- there was never loans to  
8       those entities.

9                   So, the basis for putting -- for saying that

10:05:34 10       Mr. Simpson because of anything -- any of the other  
11       businesses that he has a right to issue a retroactive  
12       capital call at the JJ Arch level under any of these  
13       Operating Agreements, there's no basis for that.

14                   On top of it, your Honor, he also uses 500,000 that  
15       comes from personal line of credit. That was a personal  
16       line of credit. It wasn't a JJ Arch expense.

17                   THE COURT: Okay, counsel, twenty minutes is  
18       expired. I have your papers for beyond that, but we have a  
19       lot to get to so I'm going to switch to Mr. Altman. I did  
10:06:12 20       give you more like twenty-five minutes, so.

21                   MR. ALTMAN: Good morning, your Honor. With any  
22       luck, I'll be able to put it back on schedule.

23                   I'll frame the issues. What you will hear a lot  
24       from me today is about enforcing written agreements between  
25       the parties, the two Operating Agreements. That is -- our

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1 focus on that will be the focus of presentation in both  
2 cases.

3 The starting point here is the Operating Agreement  
4 for JJ Arch. I, also, want to frame the issues that are on  
5 the table and not. I understood from your directions that  
6 the Court is not entertaining today the possibility of entry  
7 of a receiver.

8 THE COURT: Correct.

9 MR. ALTMAN: So, I'm going to focus only on those  
10 aspects that seek to impair, impede, affect Mr. Simpson's  
11 operations of JJ Arch. And as to that, with respect to the  
12 JJ Arch Operating Agreement, our papers I think, Judge, make  
13 pretty clear and you've ruled Mr. Simpson can do just about  
14 anything he wants except --

15 THE COURT: Every time you quote that order, you  
16 put in bold the portion of the paragraph that says  
17 "Mr. Simpson has managerial control" and then you take the  
18 bolding off for the part that says that it's subject to  
19 paragraph 3.2, which are very significant consent rights.

20 MR. ALTMAN: Without question.

21 THE COURT: Which, basically, is a major carve-out.

22 MR. ALTMAN: Let's break them apart. That's where  
23 I intended to go, exactly where I intended to go.

24 So, the day-to-day operations of the company,  
25 Mr. Chassen has no rights to anything.

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1 THE COURT: Subject to it being a major decision.

2 MR. ALTMAN: Subject to it being a major decision.

3 If it is not a major decision, Mr. Chassen doesn't have an  
4 opportunity to anything, any money.

5 THE COURT: Most of the things in the TRO or  
6 certainly a number of the larger ones are right between the  
7 eyes definition of major decision.

8 MR. ALTMAN: Only two of them.

9 THE COURT: Well, they're the big ones.

10:08:17 10 MR. ALTMAN: I'll get to that. I want to take a  
11 little piece at a time, right.

12 If and to the extent Mr. Chassen is complaining  
13 about you paid the cellphone bill, you didn't do that; Mr.  
14 Simpson is entitled to do that, clearly under the Agreement.  
15 There's no objection to that. Any money that he spent with  
16 respect to that is perfect and proper and authorized and  
17 directed by the Operating Agreement, off the table.

18 Next, I wasn't going to jump into right away, but  
19 counsel fees, easy also. I have not received and I have no  
10:08:49 20 expectation of receiving any fees, not one penny from JJ  
21 Arch. Haven't been paid, I make that representation to the  
22 Court.

23 THE COURT: So, the wire transfer, that's not  
24 accurate?

25 MR. ALTMAN: Not me. Not since I've been in it.

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1       Those were monies that were paid before to Mr. Israel and,  
2       otherwise, who were at the time representing JJ Arch. Off  
3       the table.

4                   Next issues, the two issues that -- the two matters  
5       that are, arguably, major decisions: The 1983 Porsche, I  
6       think your Honor and I are similar same age. I, too, was in  
7       law school 1983. First of all, it's a de minimis matter  
8       because the car is being marketed for \$45,000 and maybe  
9       we'll get an offer for it for \$36,000. But be that as it  
10      may, if that were to be the tale wagging the dog, the sole  
11      basis for Mr. Chassen's claim to that property is this  
12      August 1 Agreement, which as you acknowledge has never been  
13      consummated and, surely, from what I heard so far today --

14                   THE COURT: Well, it was signed.

15                   MR. ALTMAN: It was signed, but never consummated.

16                   THE COURT: What does consummated mean in this  
17      setting?

18                   MR. ALTMAN: A condition precedent expressly in  
19      the contract that the loan was going to be secured from  
20      Connect One Bank was not achieved. The money that was  
21      funding the initial payment was from that loan. The loan  
22      didn't close. You've observed the reason why. This was a  
23      fascinating sort of concession.

24                   Mr. Schwartz represented to the Court that an  
25      e-mail that we attached where Mr. Chassen said he only had

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1       25,000 and he didn't have the half million dollars, that's a  
2       lie; but what he told the bank was the truth that he really  
3       had the money.

4               Suffice to say that their claim for a TRO or a  
5       preliminary injunction that they have -- will fail to show  
6       likelihood of success on the merits of any claim based on  
7       the August 1 contract, based on the testimony in the record,  
8       and argument today. So, I move past that.

9               There's no question --

10               THE COURT: Well, again, for the TRO part, again,  
11       I'm looking at -- the first part of the TRO is really about  
12       selling assets of JJ Arch.

13               Next thing, part B of it was the -- hang on a  
14       second. First part of the TRO was transferring, encumbering  
15       assets of JJ Arch towards control entities. That's the  
16       first thing we talked about. That's the consent rights  
17       issue.

18               The next one is transferring or encumbering or  
19       disposing of assets that were purportedly conveyed to  
10:11:42 20       Chassen under this August 1 Agreement.

21               I agree with you there that it's a different  
22       question, it's a different agreement.

23               A TRO is not as much about likelihood of success on  
24       the merits as a PI. You have to look at the merits and make  
25       sure there's some rationale for it; but it's mostly about,

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1       you know, please put a hold on this for a week or two until  
2       we can have our PI hearing because it's irreparable harm.

3           So, I questioned also what's the irreparable harm  
4       under this part? The only thing I could find is there's a  
5       case or two that says vintage vehicles are unique assets  
6       under some provision of the CPLR and, you know, it's like  
7       sewing the Hope diamond or something where money won't  
8       really do it. That's the argument.

9           I don't even know if that is really even played out  
10       very well; but if there's any argument for these August 1  
11       assets, most of that is just a financial thing. If they win  
12       on the contract, they get money back. There's one asset,  
13       1983 antique Porsche. Is that a unique asset that we have  
14       to stop the sale of right now?

15           MR. ALTMAN: I agree. I don't think I need to say  
16       more.

17           THE COURT: Well, you do because there is a case  
18       saying that a 1967 Ferrari is.

19           MR. ALTMAN: 1967 Ferrari is not 1983 Porsche. We  
20       can go out and buy 15 1983 Porsches today with a hundred  
21       thousand miles on it, not a 1967 Ferrari. That's a whole  
22       other story, not a car that I could buy for \$36,000. I'm  
23       not going to spend more of my time on that issue.

24           THE COURT: Fine.

25           MR. ALTMAN: If that's okay with the Court.

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1                   THE COURT: But the one that most -- I was most  
2 focused on because it also affects all these third parties  
3 is the 2A, which is can we put a hold on asset dispositions  
4 until we figure out the receivership question, which are  
5 asset dispositions that would -- I would say -- under the  
6 Agreement seem to require consent unless Mr. Chassen has de  
7 facto no longer has those rights.

8                   MR. ALTMAN: So, as usual, Judge, spot on and right  
9 on top of all the issues exactly as they are. We say in our  
10:14:34 10 papers, I think fairly clearly as I could express it in  
11 writing. We say that Mr. Chassen doesn't have any rights in  
12 JJ Arch anymore.

13                  THE COURT: None of that has been decided. You  
14 have an argument that based on a lot of undecided issues at  
15 this point, that you will, ultimately, prevail in showing  
16 for yet another reason Mr. Chassen should have been kicked  
17 out of this membership a long time ago; but that is not  
18 something I'm going to be -- look, let me take a step back.

19                  I think your papers make allegations that are, to  
20 my mind, nonfrivolous about things that happened, some of  
21 which I haven't heard of before and that will have to be  
22 litigated between the two gentlemen. They're not done.

23                  My inclination, candidly, is to until I see and  
24 there's some adjudication of Mr. Chassen forfeiting those  
25 rights, I'm going to stick with the contract in place as you

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1           started out by saying and the fight between them will go on.  
2           But until that happens, my inclination, anyway, is to adhere  
3           to the contract which I've done consistently with one  
4           exception.

5           MR. ALTMAN: That would please us and that's a  
6           serious one, but we'll talk about later.

7           THE COURT: The AREH is a different case.

8           MR. ALTMAN: But, here, precisely to that point --  
9           I suppose I should put it in the argument to be sure --  
10           there's no question contrary to what counsel's argument that  
11           Mr. Simpson has rights to issue the capital calls that he  
12           did. Counsel misquoted Section 4.2(a) -- excuse me -- (b)  
13           of the JJ Arch Operating Agreement.

14           Section 4.2(b), Sub (ii), makes clear that Mr.  
15           Simpson's can determine that the company is required to make  
16           a capital contribution to an initial capital investment,  
17           initial capital entity.

18           And if you walk back, I won't spend the time here  
19           to the definition. It's a defined term.

10:17:05 20           THE COURT: Where are you reading from?

21           MR. ALTMAN: Page 10, 4.2(b)(ii). That  
22           specifically authorizes, we say, Mr. Simpson to make a  
23           capital call with respect to the investment entities because  
24           there's no question that JJ Arch is the managing member of  
25           the four companies that operate --

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1                   THE COURT: That's if the company is required to  
2 make a capital contribution to an investment entity.

3                   MR. ALTMAN: And those decisions were all to be  
4 made by Mr. Simpson as the managing member of JJ Arch, which  
5 he had unfettered control.

6                   THE COURT: And "required" you think means  
7 something other than legally required. If he thinks it is a  
8 good idea.

9                   MR. ALTMAN: It is not more than a good idea. You  
10 don't have money to pay debts, your Honor; or you can't pay  
11 back loans and you need to refinance loans. It is required  
12 in order to operate the business.

13                  THE COURT: Well, each of these investment entities  
14 had other investors; right?

15                  MR. ALTMAN: No, no, no. This morning, this is  
16 just Mr. Chassen and except for Mr. Peldman and may be a  
17 perfect time to segue to discuss him in connection with  
18 this.

19                  There may have been one other thing I wanted to get  
10:18:23 20 into. I can't remember it, so obviously not.

21                  So here's the problem with maintaining the status  
22 quo and not allowing any efforts to refinance or market the  
23 properties.

24                  Mr. Simpson and Mr. Peldman have been in regular  
25 dialog in a concerted effort to refinance the 88th Street

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1 property. Mr. Chassen has made clear he's not  
2 participating. He's refused to give his consent. We've  
3 attached the exhibits that I'm sure you've seen where he  
4 delayed and foot dragged, and it's urgent. Mr. Peldman  
5 rightly said please help us. Here's an independent party.  
6 He's got real money in the game.

7 We are actively working with Mr. Peldman and his  
8 counsel to work out an arrangement to refinance the  
9 property; and if that's not successful, to sell it.

10:19:19 10 THE COURT: But now you're getting into -- you're  
11 saying that he should have consented and there's no basis  
12 for him not consenting, and maybe he's subject to a lawsuit  
13 for not doing that.

14 MR. ALTMAN: I'm saying something more. I'm saying  
15 that if you grant the relief that he's seeking, it will  
16 block that valid legitimate appropriate --

17 THE COURT: The relief doesn't block anything other  
18 than Mr. Simpson proceeding unilaterally. Mr. Chassen has  
19 fiduciary duties of his own probably to these investors, and  
10:20:04 20 whoever proceeds and either does or doesn't consent to JJ  
21 Arch doing things does so at their own peril.

22 MR. ALTMAN: Yes, I agree completely.

23 THE COURT: But you're saying -- what you're saying  
24 is that the Court should say, Well, forget about the consent  
25 rights because those are stupidly being not exercised and I

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1 should let despite what the contract says, let Mr. Simpson  
2 just do it without regard to the consent and where do I get  
3 the power to do that?

4 MR. ALTMAN: I've already passed over that. I've  
5 given you the reasons, foreclosure, resignation; but I'm not  
6 talking about that now. Now I'm moving to a next place and  
7 I'm saying the requested TRO is too broad and it will  
8 effectively preclude Mr. Peldman and Mr. Simpson from  
9 refinancing the property.

10:20:53 10 THE COURT: I agree the way it's written does not  
11 bind itself to the scope of the consent rights, which is one  
12 problem I have with it.

13 MR. ALTMAN: That's all we want, Judge. We want to  
14 live under the contract. I do say first he has no rights.  
15 He's been terminated. He's been foreclosed upon. He's been  
16 resigned. We can do --

17 THE COURT: Let me move on. So, it also asks about  
18 preventing him from making distributions to himself. And,  
19 again, what I would at least think about adding at least  
20 conceptually in my mind is not making distributions to  
21 himself in a way that would contravene Article 5 of the  
22 Operating Agreement because the Operating Agreement talks  
23 about distributions and how they get done.

24 And I don't know exactly -- I've had a lot of small  
25 companies where they come in and there's kind of like the

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1 law of this company where, well, I take a distribution here  
2 and I pay for this. That's all out the window when you're  
3 here. Now it's the law of the State of New York and the law  
4 of this contract.

5 So, as I read it, anyway, there are regulations in  
6 the contract about how distributions will work and when they  
7 will occur and you first look at capital accounts. So, if  
8 Mr. Simpson can establish that the capital accounts permit a  
9 distribution first to him because he's owed the money,  
10 that's the way the contract works.

10:22:30 10  
11 After that, every distribution has to be pro rata;  
12 right?

13 MR. ALTMAN: Agree a thousand percent. As I  
14 started and I'll maintain, we will live by the contract.  
15 Here's where --

16 THE COURT: And is right now -- I've sort of  
17 generally described the process here, but is the rationale  
18 for any distributions that Mr. Simpson might take that he is  
19 entitled to preferential distributions under Article 5 of  
10:23:10 20 the -- yeah, because it says in terms of distributions they  
21 go first to the members in proportion to their respective  
22 capital contributions until their respective unreturned  
23 capital contributions have been reduced to zero.

24 Is that the rationale for any distributions you  
25 want to make unilaterally?

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1                   MR. ALTMAN: Yes, your Honor, and the amounts in  
2                   the capital accounts are not a creation of Mr. Simpson.  
3                   It's a creation of Mr. Chassen. It's in fact the -- I  
4                   thought I would be able to avoid that -- it was based on a  
5                   schedule of the respective capital accounts prepared by  
6                   Mr. Chassen. The numbers are not disputable.

7                   So, yes, we're entitled to that, but there's more.  
8                   That's sort of a dayenu.

9                   But here's the last piece of it. Not only is Mr.  
10                  Simpson entitled to those monies, Mr. Chassen has admitted  
11                  in his papers that contrary, in direct contravention of the  
12                  Operating Agreement and your orders, he's taken money  
13                  himself and highjacked it from Head of Pond. Not only has  
14                  he interfered with "I want Airbnb it," even though he has no  
15                  right to do under the Agreement.

16                  THE COURT: Look, I don't know if I have them all.  
17                  I have the Operating Agreements and I have been operating  
18                  under the -- and focussing on the Operating Agreements for  
19                  JJ Arch. I recognize that there are sub-agreements at the  
20                  investment entity levels.

21                  MR. ALTMAN: They're all the same.

22                  THE COURT: So, I don't know what those really are.  
23                  And, I get it, that in the ordinary course of  
24                  business, people have kind of paid themselves periodically  
25                  without following the niceties of Article 5. That's over.

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1 MR. ALTMAN: Right, and that should be --

2 THE COURT: Unless you have a salary, like an  
3 employment agreement or something like that.

4 MR. ALTMAN: Mr. Chassen has none, and under the  
5 JJ Arch Operating Agreement he's not entitled to take any  
6 money and he's been taking money.

7 THE COURT: The next two -- I want to make sure I  
8 get through my list of things I have to decide on this  
9 motion.

10:25:38 10 MR. ALTMAN: Sure.

11 THE COURT: The next one is talking about using JJ  
12 Arch funds to pay counsel to represent him in a personal  
13 capacity or to pay JJ Arch's counsel funds. So, you're  
14 saying no funds -- they seem to believe that JJ Arch funds  
15 are being used to pay Mr. Simpson's counsel.

16 MR. ALTMAN: Not since I've been in the case.

17 THE COURT: So, you're being paid directly by  
18 Mr. Simpson personally?

19 MR. ALTMAN: Who is paying my fees I don't think  
10:26:15 20 need be matter of public record; but I represent to the  
21 Court without question, unconditionally, I have not been  
22 paid not one penny, not sui marquis (phonetic) -- as we  
23 learned in law school -- from JJ Arch period or any of the  
24 non-Arch entities owned by JJ Arch.

25 THE COURT: Well, I guess, then there's no harm in  
Bonnie Piccirillo - Official Court Reporter

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1       being an injunction against it because, look, conceptually  
2       you can't use company funds to pay personal counsel. That's  
3       just -- there's no rationale for that. So, if he hasn't  
4       done it and not planning on --

5            MR. ALTMAN: Until this issue of the alleged  
6       conflict between the dominant principal of JJ Arch and  
7       whether or not it is appropriate for me to continue to  
8       represent JJ Arch.

9            THE COURT: Well, that's a real issue. I mean, I  
10       don't know that it is a TRO issue right now, but the next  
11       thing is the vehicle. We talked about that already.

12           Then there's something about HPR LLC where they  
13       want Simpson not to interfere. Is that one of the entities  
14       that's under this August 1 Agreement?

15           MR. ALTMAN: That's Head of Pond. All the entities  
16       are part of the August 1 Agreement. Head of pond, 222 Head  
17       of Pond Road is a piece of real estate in the Hamptons --  
18       not too far from where I live -- that's owned by this  
19       property. That's the entity. That's the property that  
10:27:59 20       Mr. Chassen in direct violation of the Operating Agreement  
21       has been operating as an Airbnb and keeping the money for  
22       himself.

23           THE COURT: And what about the online viewing  
24       access to bank accounts? You're saying -- they say that  
25       they're still not getting it.

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1 MR. ALTMAN: We're not --

2 THE COURT: There's a new account they reference in  
3 their papers they didn't know about until recently.

4 MR. ALTMAN: And I put an affidavit -- I think it  
5 is the last exhibit in my papers that I filed yesterday  
6 afternoon, is an e-mail from Mr. Simpson to the banker at  
7 that bank very specifically instructing the bank to give him  
8 online access. Whether or not the bank is or is not, we  
9 don't know. If there's anything more that we need to do to  
10 assist in allowing that to happen if it's is not happening,  
11 of course we'll do it, Judge.

12 THE COURT: And the last thing, I'm not even sure  
13 whether I'm reading from the right list anymore, but books  
14 and records.

15 MR. ALTMAN: If this is a -- I don't want to give  
16 it an adjective.

17 Mr. Chassen has full access to all books and  
18 records and always has. What Mr. Schwartz's papers refer  
19 to is a standard form books and records request that was  
20 made under the BCL to predecessor counsel when he was in the  
21 case and to which it was responded, "You have everything."

22 That's certainly not the basis for -- if he could  
23 identify particular. And here's another one where it's  
24 curious because you want to stand it on its head.

25 THE COURT: All right, look, I need to move on to

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1 the next motion.

2 I'm going to grant this in part and very carefully  
3 here. I think the TRO is too broad, but I think there are  
4 elements of it that I think do make sense.

5 Again, my principle here is it sounds like to me  
6 there are real disputes with this August 1 Agreement. There  
7 are real disputes as to certain conduct that Simpson alleges  
8 against Chassen that may or may not impact ultimately  
9 Chassen's interests in JJ Arch.

10:30:26 10 I don't think the issues under either of those are  
11 sufficiently clear or ripe for me to start throwing  
12 injunction thunderbolts around based on either side's view  
13 at this point.

14 What I do think is clear and remains clear is that  
15 there is an Operating Agreement that is supposed to govern  
16 and does govern JJ Arch subject only to some modifications  
17 and clarifications in various orders during this case  
18 because of the sort of extraordinary events that occurred;  
19 but my touchstone in all the orders has been wherever I can  
10:31:08 20 is to stick very carefully to the Operating Agreement unless  
21 and until we get to a point of deciding that someone has  
22 breached it to the point that they lose those rights.

23 And so given that, I will enter an order pending  
24 the hearing on the motion for a preliminary injunction and  
25 temporary receiver that Simpson shall not sell or transfer

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1 assets subject to the JJ Arch Operating Agreement -- I'm  
2 sorry -- shall not sell or transfer JJ Arch assets or assets  
3 in the investment companies without Chassen's written  
4 consent under Section 3.2 of the Operating Agreement, which  
5 consent shall not be unreasonably withheld.

6 So, that's the basic provision of the amended  
7 Operating Agreement, which in exchange for changing the  
8 succession under the Operating Agreement to Mr. Chassen  
9 gives Mr. Chassen very broad consent rights, and they do  
10 clearly cover the sale of any asset of the company or any  
11 portion thereof, and the definition also includes the fact  
12 that: "Any action or decision that would constitute a  
13 company major decision if made or taken by the company shall  
14 be a company major decision if made or taken by any  
15 Investment Entity."

16 So, it covers the subentities through this.

17 And I'll write this out so that it is a little more  
18 clearer, but the restriction that plaintiff seeks is going  
19 to be circumscribed by, essentially, Simpson cannot sell  
20 assets of the company or investment entities or transfer or  
21 encumber them if they are subject to as a major decision  
22 under 3.2 without Chassen's consent, which consent shall not  
23 be unreasonably withheld.

24 Second, Simpson shall not make distributions to  
25 himself from JJ Arch accounts and funds in any way that

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1 contravenes Article 5 of the JJ Arch Operating Agreement as  
2 amended.

3 Simpson may not use JJ Arch funds or other money  
4 drawn directly from JJ Arch accounts to make payments to  
5 counsel representing him in a personal capacity.

6 I will add Simpson shall continue to provide  
7 Chassen with online viewing access of the bank accounts of  
8 JJ Arch and all JJ Arch controlled entities. That may be  
9 belts and suspenders; but just so that there is no doubt, if  
10:34:51 10 it's not happening, it should be.

11 And, finally, Simpson shall continue to provide if  
12 he hasn't already Chassen with the JJ Arch and JJ Arch  
13 controlled entities books and records under the process of  
14 Article 6 of the JJ Arch Operating Agreement.

15 The remainder of the TRO is denied. We have to set  
16 a schedule for the PI hearing.

17 Eric, do we have a time in mind for when we might  
18 be able to hear these guys? The parties can prepare a  
19 briefing schedule, but we need to figure out when we can see  
10:35:50 20 them. We have a very busy trial schedule at the moment.

21 So, we'll work on that for the time being, but I do want  
22 full briefing on the receivership motion and the preliminary  
23 injunction and all of that; and we'll be thinking about when  
24 we can hear you and then we can work backward for the  
25 briefing schedule.

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1                   So, what we're going to do is I have another  
2                   hearing coming in at roughly 11, which I'll push a little  
3                   bit; and while that's going on, you can meet with  
4                   Mr. Scarlet to agree on a schedule for briefing and we'll  
5                   find a hearing date.

6                   If you want that hearing to have witnesses, if you  
7                   want it to be an evidentiary hearing, we're going to need to  
8                   know that because that will affect how much time we -- how  
9                   much time we devote to it.

10:36:47 10                   MR. SCHWARTZ: Okay, your Honor.

11                   MR. ALTMAN: I have a question about a  
12                   clarification with respect to your intended order.

13                   As I would like to understand the order, that it  
14                   does not preclude, for example, Mr. Simpson and Mr. Peldman  
15                   to continue to attempt to secure refinancing.

16                   THE COURT: It absolutely does not interfere with  
17                   that.

18                   MR. ALTMAN: Okay.

19                   THE COURT: My only point is, though, that --

10:37:15 20                   MR. ALTMAN: If we're actually going to sell it,  
21                   we have to present it, get his consent in writing and then  
22                   come back to you if he --

23                   THE COURT: We're done with this, okay? We have to  
24                   move on to the next motion. I'm willing to if you want to  
25                   propose language for the TRO that may provide some guidance.

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1 Nothing should stand in the way of you all doing the right  
2 thing for Mr. Miller's client back there. If you needed  
3 anymore urging from me, if one or both parties are somehow  
4 using this personal grudge to the disadvantage of third  
5 parties, that's going to be an incredibly dumb thing to do.

6 And I don't know if it is going to be in front of  
7 me or not, but any denial of consent in situations where it  
8 is later viewed to be completely irrational and in harms of  
9 third party, people better think that through very  
10 carefully. I have no idea whether it's a smart thing to do  
11 or not, that's not my job; but you all are real estate  
12 professionals and I urge you not -- I was showing my law  
13 clerk earlier the apocryphal story of Kilkenny Cat. I don't  
14 know if you remember that story? The two cats that hate  
15 each other so much that they tie their tails together, and  
16 they fought endlessly until all that was left was fur. It's  
17 an allegory or a simili for people who fight so viciously  
18 that they kind of lose site of the game, and they end up  
19 destroying themselves in the process. Don't do that.

10:39:15 20 Let's move to the next motion, which was  
21 Mr. Simpson's motion to make changes to my order with  
22 respect to AREH, Arch Real Estate Holdings. This one does  
23 not have a TRO component to it. It seeks two things.

24 It seeks to authorize Mr. Simpson to terminate  
25 Mr. Chassen from JJ Arch, which is similar to what we were

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1 talking about before; and it also seeks to reinstate JJ Arch  
2 as managing member of JJ Arch Real Estate Holdings with full  
3 authority to do all sorts of things.

4 Essentially, it's a request to reconsider my  
5 earlier order making Oak the managing member.

6 Now, this one, normally, I would just be having  
7 this hearing to set a schedule. I got a request to  
8 accelerate some sort of a hearing on this because the view  
9 was that the pendency of this was the overhang of it was  
10 causing harm.

11 So, I'll listen to that. My choices today given  
12 that I've now received an opposition, the movant has filed a  
13 brief, I could just decide the motion right here and now;  
14 or I can request additional evidence in briefing or  
15 something in between.

16 So, I don't have any TRO to consider, so go ahead.

17 MR. ALTMAN: Well, let me frame the issue this way,  
18 your Honor.

19 THE COURT: So, we're going to have to -- again, I  
20 have -- I'll give you another twenty minutes a side.

21 MR. ALTMAN: I'd like to think -- again, I'll try  
22 to. I think in my mind I can do it faster, but we'll see.

23 THE COURT: I'll probably interrupt you less this  
24 time.

25 MR. ALTMAN: The application that's being sought

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1 now by Oak is for the ultimate relief in this case  
2 effectively --

3 THE COURT: I'm sorry, the application by who?

4 MR. ALTMAN: By Oak.

5 THE COURT: What application have they made?

6 MR. ALTMAN: They are asking you to decide our  
7 motion to vacate your prior order effectively giving them  
8 sole control and wiping out completely Mr. Simpson's consent  
9 rights under the AREH Operating Agreement.

10:42:10 10 THE COURT: Maybe I missed something. This is your  
11 motion, right?

12 MR. ALTMAN: It is, it is. But make no mistake,  
13 this motion is a request by Oak to confirm an agreement --  
14 an order from you which takes away completely any right by  
15 Mr. Simpson to consent to the sale or any --

16 THE COURT: Well, the status quo, that's what it is  
17 now.

18 MR. ALTMAN: Well, no, it is really not. What your  
19 order did was a little more than, and Oak giving them credit  
10:42:48 20 didn't push on it too hard because the concern is right  
21 here.

22 The way your November 10th order -- 10th, I may  
23 have the date wrong -- says is that preserve the status quo;  
24 but maintain the consent rights of JJ Arch, and the JJ Arch  
25 consent rights can be granted by either Mr. Simpson or

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1 Mr. Chassen.

2 THE COURT: And what you want in your motion -- at  
3 least as I see your pathway -- is by the part of your motion  
4 that seeks to terminate Mr. Chassen again is that that will  
5 effectively give Mr. Simpson the sole consent rights under  
6 my prior order.

7 MR. ALTMAN: In a sense that's one way to put it,  
8 but I'd like to go back to my original theme was we would  
9 like you to enforce the Operating Agreement as written, and  
10 I submit to you that the Architect Real Estate Holdings  
11 Operating Agreement when originally formed had the  
12 80 percent operating member is JJ Arch of which Mr. Simpson  
13 is the managing member. He controlled that 80 percent  
14 interest. The investment member, Oak, owned 10 percent.  
15 All the decisions were being made by Mr. Simpson.

16 We've -- I'm not trying to reargue what finding you  
17 made with respect to that. I know it is hard to hear  
18 that --

19 THE COURT: Aren't you doing that?

20 10:44:16 MR. ALTMAN: Excuse me?

21 THE COURT: It is exactly what you're doing.

22 MR. ALTMAN: I'm really not intending that.

23 THE COURT: You just want me to change the result?

24 MR. ALTMAN: No. The one piece of it where you  
25 went beyond what the Agreement provides.

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1                   THE COURT: I didn't do it by accident. I  
2 explained it very clearly why I was doing it.

3                   MR. ALTMAN: And that's exactly what they want. If  
4 rather than give me discovery and a hearing, which is what I  
5 made pretty clear when I was here last time that's what we  
6 want. This is a big issue, a lot involved, a lot at stake.  
7 It can't be decided summarily on the papers. At that point  
8 Oak had just put in some reply papers, which I hadn't had a  
9 chance to see, this is sort of the same thing again.

10:44:54 10                   I don't have an opportunity of what's been  
11 presented to you today, I cannot cross-examine an affidavit  
12 by Mr. Wiener which I got yesterday at noon, absolutely  
13 incapable. I wouldn't even pretend to do it, not in a  
14 million years.

15                   I've also been deprived of any discovery with  
16 respect to anything on this issue. I served discovery  
17 requests as soon as we came in in an effort to intending  
18 that we would be making this motion that it would be decided  
19 in the ordinary course.

10:45:20 20                   Now, I understand --

21                   THE COURT: Have you been rebuffed on discovery?  
22 Why haven't I heard that?

23                   MR. ALTMAN: Because I've been gentlemanly and  
24 counsel -- we set a schedule let's not do it right now, it's  
25 the holidays. We'll do it at the end of January, first days

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1                   in February, let's do the parties first.

2                   I'm a busy practitioner as well and counsel at  
3                   Haynes and Boone asked for this request, and I gave it to  
4                   them. To date, they asked for an extension of time until --  
5                   I think it's this week or next week to respond to my  
6                   discovery requests. I haven't gotten anything yet.

7                   So, it's not surprising to me. I mean, it's nice  
8                   litigation gambit what they're trying to do. Have the issue  
9                   that we crystallized that we said because you really,  
10                   really, Judge, if you allow the Oak to make business  
11                   decisions and sell or refinance the AREH properties without  
12                   Mr. Simpson's consent, that I believe is not permitted, not  
13                   conceived in connection with this.

14                   THE COURT: I mean, there is an appellate court;  
15                   right?

16                   MR. ALTMAN: Oh, that's where I'm going, Judge. I  
17                   mean, I'll jump forward to it. If today or soon you're  
18                   going to grant that relief, I'm going to ask you to stay the  
19                   order, and I'm going to go to the First Department.

10:46:43 20                   THE COURT: Counselor, I already have granted that  
21                   relief in November.

22                   MR. ALTMAN: They haven't acted on it. They still  
23                   have not done anything. Here's the other problem. As  
24                   aggressive a litigator and arguer as I am, I'm really a  
25                   practicing settler. What should be happening is Oak should

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1       be sharing with Mr. Simpson the proposed transactions and  
2       the things that they're working on and solicit his input so  
3       that he may be involved in it.

4           If that were happening, we may not be -- we  
5       probably would, but we may not be here, certainly not to  
6       that extent. We haven't gotten any of that.

7           Investor calls have been had. They have attempted  
8       to block him from it. There's been no cooperation  
9       whatsoever because they got this one step up in a  
10      preliminary application where they got an order from you  
11      that says, well, looks like we can kind of do whatever we  
12      want and sell all these properties or refinance them without  
13      Mr. Simpson's consent.

14           The motion that we made -- and I didn't ask for  
15       temporary relief saying don't do it. I want them to  
16       continue doing whatever they do. But, ultimately, if the  
17       information that we've presented from Ms. Las and other  
18       investors, what the parties specifically told Mr. Simpson  
19       that what we want to do is get out and our primary purpose  
20      is to relieve our personal guaranties.

21           If what Oak is doing is even handed, we have no  
22       objection; but we have no way of knowing that because they  
23       totally blocked them out and I haven't been provided any  
24       discovery. And if you do that today, that's where the case  
25       is going. I'll ask you to stay it. You'll either grant it

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1       or deny it. I'll go to First Department. They'll grant it  
2       or deny it. I would like for that not to happen.

3                   THE COURT: Well, the changing of roles of making  
4       Oak managing member and the switch, it has a contractual  
5       basis to it; and it was, in my view, justified by what I  
6       consider overwhelming evidence of just some outrageous  
7       conduct.

8                   MR. ALTMAN: I understand that.

9                   THE COURT: And, so, I don't want to go through all  
10       of that again; but that record to me was overwhelming in  
11       favor of doing it that way. And to be quite honest, and I  
12       get it, you haven't cross-examined the affidavits and  
13       neither have I heard any cross-examination of it; but the  
14       story I hear from Oak in their affidavits and in their plans  
15       is a sort of a cohesive cogent plan and, frankly, what I  
16       hear and see from the Simpson side is not.

17                  Now, I haven't heard anything to suggest that their  
18       plan of outsourcing and not having as many employees and  
19       having it be done by professionals, that's the kind of sort  
20       of rational plan at least I envisioned when I made that  
21       order to begin with. Because, let's face it, this place was  
22       spinning out of control and into the ground.

23                  MR. ALTMAN: For lack of funding and, yes, I agree  
24       with you. Although, it's the first I have heard of  
25       outsourcing to replace employees was in the papers that I

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1 read yesterday afternoon. First time I ever heard of it.

2 We've gotten no information whatsoever, no information with  
3 the real issue, the one I'd like to focus --

4 THE COURT: I don't know if this is what you're  
5 seeking, also. I don't recall making any order that -- you  
6 know, JJ Arch is still a member of AREH, and they should be  
7 entitled to the same kind of information that any member  
8 would be entitled to.

9 MR. ALTMAN: We agree. The problem here is this  
10 side fight that Oak is controlling between Mr. Simpson and  
11 Mr. Chassen because Mr. Chassen knows everything because  
12 he's on salary at Oak now. We've got some claims against  
13 them about that, but the projector of this entire investment  
14 vehicle has been given no information whatsoever with  
15 respect to the proposed transactions for all of the entities  
16 that he put together, that he brought, 125 investors with  
17 over \$110 million of investment money.

18 THE COURT: Candidly, that's from my perspective  
19 his own fault because of how --

10:51:14 20 MR. ALTMAN: Not getting information now.

21 THE COURT: No, not that. Look, I don't really  
22 throw around orders like that in cases very often. It's the  
23 last thing I want to do is get involved in this, but the --  
24 the animus that I observed was clearly hurting the entity  
25 and all the other third parties that depend on the entity;

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1 and it got to the point where it was so dysfunctional that I  
2 didn't feel like there was any other choice and I didn't see  
3 anything in the papers I've read in connection with this  
4 motion which causes me to even for a moment change my mind  
5 on that.

6 So, again, if you want to appeal that, that's fine;  
7 but I don't see any reason to what is effectively asking me  
8 to just change my mind on that decision at this point. But  
9 I don't recall seeing anything in that decision that  
10:52:26 10 deprived Mr. Simpson or anyone at JJ Arch for information to  
11 which they would be entitled, but not decision-making  
12 authority. That order put him in the role that Oak was  
13 supposed to be in before as a, you know, they're an  
14 investor, he's an investor at this point and that's that.

15 So that part of this motion I'm not, frankly,  
16 persuaded by.

17 The second part, which is the Chassen facing part,  
18 I think that sounds like a real claim. I don't know a lot  
19 about it at this point or enough about it to make any  
20 decision on it other than to schedule it for whatever  
21 hearing it is you want. But, I'm -- I guess maybe what  
22 you're asking me for is you want an evidentiary hearing now  
23 on the first part to essentially reconsider the order I made  
24 in November that I based on the evidence that was in front  
25 of me and I'm not inclined to do that.

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1 MR. ALTMAN: That's not what I'm asking for now.

2 Let me try to as best I can put a point on it.

3 If and to the extent you enter any order or  
4 continue any order that allows Oak to sell, dispose,  
5 refinance or do anything with respect to the investment  
6 entities of AREH without Mr. Simpson's consent, I submit to  
7 you it is contrary to the Arch Operating Agreement and we're  
8 going to ask for an immediate stay and appeal afterwards.

9 I get how you got to where you got, but that's too  
10 far.

11 THE COURT: Let me hear from the other side.

12 MS. THORNE: Thank you, your Honor. I'll try to  
13 keep it very brief.

14 I did want to stress the emergency nature, why we  
15 asked for a hearing right away; and that is because there  
16 are a number of deals in process where the properties will  
17 be foreclosed upon if they are not consummated. We have  
18 consents from investors. We have worked out deals with  
19 lenders. We're happy to discuss the details of any of those  
20 if your Honor has concerns about that.

21 THE COURT: Is Chassen now an employee of Oak?

22 MS. THORNE: No, he is not. What we have here in  
23 this motion and in Mr. Simpson's representations to lenders  
24 that his consent is required is simply proof of why your  
25 Honor entered the order in the first place. And part of the

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1 reason we believe that Simpson didn't choose to seek a TRO,  
2 because he's accomplished what he wants by having the motion  
3 on file because it's simply shown confusion and concern from  
4 all the lenders about what order is on the table, what may  
5 happen in a week.

6 And that's why we would respectfully request that  
7 your Honor confirm your previous order and including the  
8 fact that we do not need Mr. Simpson's consent for any major  
9 decisions.

10:55:55 10 THE COURT: Well, you need either his or Chassen's.

11 MS. THORNE: Correct.

12 THE COURT: You need one of the JJ Arch members'  
13 consents.

14 MS. THORNE: Yes. I did just want to correct the  
15 record on a couple of things.

16 THE COURT: And, by the way, Mr. Chassen in making  
17 those decisions is supposed to be exercising his fiduciary  
18 duties to JJ Arch and the like. So, that's not supposed to  
19 be just a proxy for Oak consenting to its own transactions.

10:56:27 20 MS. THORNE: We absolutely have no problem with  
21 that. We have no reason to believe Mr. Chassen isn't doing  
22 that. We have been providing all of the information to him  
23 -- although, word on that with respect to Mr. Simpson as  
24 well -- for him to independently assess and determine --

25 THE COURT: I'm sorry, did you say you are also

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1 providing same information to Mr. Simpson?

2 MS. THORNE: I don't know if it is the same  
3 information, but I do take issue with the fact that  
4 Mr. Simpson says he is not being kept in the loop. He  
5 certainly is.

6 If you look at his own exhibits that were filed in  
7 connection with his motion, they are replete with  
8 discussions about the deal terms, discussions about the  
9 lease of -- at 88 University. You see e-mails from  
10 Mr. Wiener saying, "I wanted to keep you in the loop on  
11 everything that's happening."

12 So, I would, you know --

13 THE COURT: What would be the reason not to give  
14 him the same information that Chassen is given?

15 MS. THORNE: Well, I will say because I do want to  
16 repeat, I don't know exactly if it's a mirror image of  
17 what's being provided; but I will say absolutely there would  
18 be a reason.

19 I mean Mr. Simpson has done nothing but try to end  
20 these deals, misrepresenting facts to lenders so that he can  
21 stand in the way of them happening despite the fact that  
22 they are quite obviously in the best interest of investors,  
23 and we have never done anything to keep any information away  
24 from him. There are obviously conversations that are had  
25 with Mr. Chassen that Mr. Simpson is not on the phone. He

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1 has been on every single investor call.

2 And that's my only reluctance saying there may not  
3 be a perfect mirror of information, but I can commit to your  
4 Honor that Oak has provided him with information on the  
5 deals as is evident from even what he has submitted to this  
6 Court.

7 THE COURT: Sufficient information that he can  
8 determine whether to exercise his consent right?

9 MS. THORNE: Absolutely, he has been involved in --

10:58:28 10 THE COURT: So, all material information about  
11 these transactions?

12 MS. THORNE: All material information about the  
13 transactions. He's been on phone calls with the lenders  
14 himself. He's had his own discussion with them apart from  
15 us. He's had discussion with other investors who are  
16 spearheading those negotiations. There is no hiding the  
17 ball here.

18 THE COURT: Just so we're clear, I'm trying to get  
19 my bearings on this again. That's not the kind of  
10:59:01 20 involvement that he's necessarily entitled to.

21 MS. THORNE: Correct.

22 THE COURT: Because Oak is the managing member  
23 under my aware anyway and makes the managerial decisions.  
24 JJ Arch is now the -- essentially the investor member and is  
25 entitled to some information, but is not entitled to be

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1 making the decisions or being on the phone with lenders or  
2 getting involved and certainly not in interfering with Oak's  
3 job as managing member. So, I'm not sort of nodding along  
4 to all this saying that that's something he's entitled to  
5 do. He's entitled to the kind of information that investor  
6 member should get.

7 So, it is a narrower kind of thing, and I don't  
8 want to be misunderstood as saying that, well, you know,  
9 because JJ Arch used to be the managing member, they should  
10 still get that kind of access. That's not the way I  
11 intended this order to work. This was a switching of sides.  
12 Frankly, the agreement does provide for that under certain  
13 circumstances where there is cause; and the record is I  
14 think clear in the last motion, there was cause to do that.

15 MS. THORNE: And I appreciate that, your Honor.  
16 And I'll just tell you from a practical perspective, the  
17 reason that Oak has provided more information than it has to  
18 is because, ideally, everyone we get on board with these and  
19 we could all have a kumbaya moment and get some deals done.

20 So, Oak is not in a situation where they're trying  
21 to cut him out. Ideally, we would all just agree on these  
22 things as we should, as everyone else is agreeing. But,  
23 instead, what has happened is what I think exactly what your  
24 Honor feared would happen which is an unbelievable amount of  
25 interference and, frankly, using this Court to try to sell

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1                   doubt amongst lenders about whose consent is required for  
2                   deals to go through.

3                   THE COURT: Well, there should be no -- I don't  
4                   understand what the uncertainty is. There's an order which  
5                   I hope it's clear. This is a motion, although not styled  
6                   this way, asking me to reconsider it and I'm not going to  
7                   based on what I've seen.

8                   MS. THORNE: All right. Well, thank you very much,  
9                   your Honor.

11:01:33 10                   THE COURT: There is a part of the order, though,  
11                   that also asks for relief against Mr. Chassen.

12                   MR. SCHWARTZ: Yes, can I address that --

13                   THE COURT: Before I let Oak's counsel sit down, I  
14                   do understand because it's a clever potentially move here  
15                   that this is a potential side door around an overt asking me  
16                   to change the order. If the other part of the order which  
17                   seeks to jettison Mr. Chassen from JJ Arch were it to be  
18                   granted, I went back and looked at my other order and the  
19                   consent rights were to be exercised by either of JJ Arch's  
11:02:13 20                   members, Mr. Chassen or Mr. Simpson.

21                   So the second one, trojan horse, if you will, is if  
22                   I do that, if I say, Well, you know, based on this  
23                   August 1st thing or something that happened in September,  
24                   Chassen's out; that probably has the effect of changing the  
25                   text of my earlier order or at least it could unless I

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1 change it along with it.

2 MS. THORNE: And, your Honor, that's exactly what  
3 we're worried about because what we need to finalize --

4 THE COURT: To be honest with you, I'm prepared  
5 based on the papers I have already to deny the branch of  
6 this that relates to changing my prior order. I'm not  
7 prepared to just wipe away without some additional process  
8 to get rid of a new argument about "terminating"  
9 Mr. Chassen based on, frankly, a record that's a little  
11:03:18 10 murky to me.

11 MS. THORNE: And I'll let Mr. Schwartz address part  
12 of that; but I would argue, your Honor, that when you  
13 entered the PI, it was based on our mountain of evidence  
14 related to cause events under the --

15 THE COURT: And the cause changes -- just the way  
16 that contract, works, right -- it's cause to remove the  
17 managing member; and when that as I recall the language, it  
18 basically you switch positions and they become an investor  
19 member with consent rights.

11:03:55 20 MR. THORNE: That's correct. But one thing I would  
21 note is that under the JJ Arch Agreement, cause events for  
22 removal plaintiff of Mr. Simpson are supported by the cause  
23 events under Arch. And I know we're not deciding that  
24 today.

25 THE COURT: Well, that's a motion that's not even

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1       in front of me. It's a removal of Mr. Simpson at JJ Arch.  
2       Right now the only thing -- well, it depends on what month  
3       it is because I usually have a motion to remove one or both  
4       of them at any particular time in my docket. This time the  
5       one that I have is the motion to remove Chassen.

6                    MR. THORNE: Right. And I would note, though, that  
7       there should not be any scenario regardless of what happens  
8       there where Mr. Simpson somehow recovers those consent  
9       rights through the back door or otherwise given that those  
11:04:50 10       cause events flow through to the JJ Arch.

11                  THE COURT: Well, I'm pointing out that I recognize  
12       the possible play that they are putting in motion here; and  
13       I would have to consider in granting that whether as a  
14       consequence of that I would have to modify my order which  
15       the earlier, the November order which was specifically  
16       predicated on there being two JJ Arch members; so I would at  
17       that point reconsider how to -- how, if at all, to change  
18       that order.

19                  But, that's the next step in this because the  
11:05:37 20       battle within JJ Arch doesn't directly involve Oak; but it  
21       does through this mechanism that I just described. But  
22       there are allegations of financial chicanery at JJ Arch that  
23       Oak may not even know about and probably doesn't care about  
24       unless it affects its own interests and shouldn't really;  
25       but I just want to make sure you are seeing the same thing I

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1 am which is that although the second part of this motion  
2 which I'm not denying out of hand today and I'll set for an  
3 argument and probably an evidentiary hearing, you'll want to  
4 be there because you'll want to at least argue for  
5 protecting Oak's rights to the extent that JJ Arch's  
6 membership changes.

7 MR. SCHWARTZ: Your Honor --

8 THE COURT: Quick one, because I do have a group of  
9 people waiting to come next. I have may ask if any of them  
11:06:43 10 want to be the receiver at some point during this.

11 MR. SCHWARTZ: Your Honor, it is our position that  
12 the Court should -- we fully briefed, we put in opposition  
13 within the timeframe that the Court asked. We put in an  
14 affidavit. We put in a memorandum of law. We addressed --

15 THE COURT: Mr. Altman asked me if I would have an  
16 evidentiary hearing on his motion; and my general rule,  
17 although a lot of preliminary injunction hearings are  
18 settled on affidavits, if the parties want an evidentiary  
19 hearing I'm usually amenable to providing that because  
11:07:21 20 affidavits aren't that useful, frankly, especially with you  
21 two guys. I mean, not you two lawyers, but when I -- these  
22 two people are diametrically opposed on almost anything. I  
23 don't get a lot of comfort just from hearing the dueling  
24 affidavits between these two individuals, candidly, I  
25 don't.

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1                   MR. SCHWARTZ: Your Honor, I understand that, but  
2                   we have -- these are ultimate issues. In our amended  
3                   counterclaims we're seeking Mr. Simpson's removal from  
4                   JJ Arch. We will -- if your Honor is intending to not deny  
5                   the motion today, we're going to obviously move, ourselves,  
6                   to terminate Mr. Simpson. Clearly, there will be dueling  
7                   motions on this issue before your Honor.

8                   Ultimately, these are ultimate issues that go to  
9                   the core of the case and so it's, I think -- I think your  
11:08:15 10                   Honor's order that basically --

11                   THE COURT: That's actually a good point. So, is  
12                   the motion -- I think what they're seeking is sort of  
13                   permission to terminate.

14                   Probably in one of my earlier orders I said enough  
15                   with these unilateral terminations. None of these are going  
16                   to be effective unless there's an order from the court along  
17                   with it. But you're right, that is -- a decision on whether  
18                   there are grounds to terminate one or the other is what  
19                   lawsuits are about. The only thing that I really could  
11:08:54 20                   grant is some temporary change in status pending the  
21                   remaining remainder of the case. But, yeah, if you want to  
22                   have a reciprocal motion on for the same thing, I suppose  
23                   you can.

24                   MR. SCHWARTZ: I mean, we certainly will do that,  
25                   your Honor. But I think, also, if your Honor looks at the

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1 bases that are raised in this motion as they pertain to Mr.  
2 Chassen, they are so -- they're so limited in what they  
3 allege and basically comes down to --

4 THE COURT: I, candidly, don't agree with that.

5 Applying a somewhat of a motion to dismiss kind of standard  
6 if I accept as true all of the things that they're alleging  
7 that Mr. Chassen did, it may not be accurate; but if it is  
8 accurate, it doesn't seem frivolous to me.

9 MR. SCHWARTZ: Your Honor, if you look at the  
11:09:51 10 e-mails with respect to the 89th Street property; for  
11 example, there is no evidence that Mr. Chassen did not  
12 consent. Mr. Chassen is a named defendant in the  
13 foreclosure action as a guarantor and he's liable for any  
14 deficiency judgment. Mr. Chassen did respond to Mr. Peldman  
15 on January 3rd.

16 THE COURT: So, you're saying that he unequivocally  
17 consented to --

18 MR. SCHWARTZ: Correct, correct, and there was --  
19 Mr. Simpson attaches an e-mail just from I believe it was  
11:10:23 20 January 8th where they attached -- where the e-mail has a  
21 proposed agreement with the lender that says it is subject  
22 to further review from counsel.

23 THE COURT: Put this aside for a second. Are you  
24 representing in court right now that he consents to that  
25 going forward?

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1                   MR. SCHWARTZ: He has consented, he consented to  
2                   the refinancing this property. He is going to be liable for  
3                   any deficiency judgment on this loan.

4                   THE COURT: Well, I suggest that because for  
5                   whatever reason, I have two lawyers standing in front of me  
6                   who have every reason to want to move forward with that  
7                   transaction who don't think they have the consent. I would  
8                   suggest whatever form that they consider necessary to  
9                   memorialize that consent, your client even if he thinks he's  
11:11:11 10           already done it, confirms it quickly.

11                   MR. SCHWARTZ: He confirms it in e-mail -mail that  
12                   we attached.

13                   THE COURT: Forget e-mails. Let's forget  
14                   everything that -- whatever else has happened, I have two  
15                   folks who don't think it happened. So, I would suggest that  
16                   the three lawyers when we're done here which is going to be  
17                   extremely soon, get together and find an appropriate way of  
18                   documenting this consent so that at least this sub-issue can  
19                   move on, okay?

11:11:43 20                   MR. SCHWARTZ: Certainly, your Honor. There's  
21                   no -- we'll do that after, your Honor.

22                   But I'd just also like to point out, your Honor,  
23                   that in the January 9th e-mail where this proposal was  
24                   attached subject to further review by counsel, Mr. Simpson,  
25                   again, tells Mr. Chassen, "Jared, please be advised that I

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1 am the sole managing member of JJ Arch and you have no  
2 ability to do anything without my explicit approval."

3 Again, at NYSCEF number 594. This continues --

4 THE COURT: At some level there's nothing incorrect  
5 about that sentence.

6 MR. SCHWARTZ: While he's asking Mr. Chassen to  
7 consent, he's always saying, nothing you can do. You have  
8 no rights at all. Everything --

9 THE COURT: Well, that part would be wrong.

11:12:29 10 MR. SCHWARTZ: Okay.

11 THE COURT: Look, this isn't that hard, right? I  
12 mean, I understand that these guys couldn't agree on the day  
13 of the week, but the contract puts them in the cats tied  
14 with their tails together.

15 Simpson is in charge, but there's an enormous  
16 carveout for what's called major decisions; but to my  
17 reading, a lot of those are broader definition of major  
18 decisions than you see in a lot of agreements, but that's  
19 what they agreed to. So, they're locked together, tied  
11:13:10 20 together, sometimes the cats in the telling of the story in  
21 a bag tied together, don't let them eat each other because  
22 it's not going to work out very well.

23 MR. SCHWARTZ: Absolutely, absolutely, your Honor;  
24 but if I could just make one other point, your Honor.

25 There's no evidence -- Mr. Simpson presented no

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1 evidence, your Honor, of a request that was -- that  
2 Mr. Chassen refused. Under the JJ Arch Operating Agreement,  
3 if Mr. Chassen ignores a request, he automatically is deemed  
4 a consent. So, there is not any evidence that there's been  
5 affirmative refusal --

6 THE COURT: I guess that's your position.

7 Mr. Altman wrote I thought some persuasive papers that  
8 sounded fairly reasonable in the other direction that, you  
9 know -- look, the fact that I have come out on numerous  
11:14:01 10 occasions finding that Mr. Simpson's actions were  
11 unreasonable doesn't mean that he's wrong on everything; and  
12 there's some things that I read in there about the back and  
13 forth which doesn't put your client in the best light  
14 either.

15 So, I wouldn't get too over confident by the fact  
16 that there's been a bit of a winning streak because I  
17 haven't gotten to the bottom of these intra-JJ Arch disputes  
18 yet, and I will.

19 MR. SCHWARTZ: Your Honor, we're certainly not over  
11:14:37 20 confident about anything, your Honor; but I think -- I think  
21 the upshot of everything here, your Honor, is JJ Arch is no  
22 longer a managing member of AREH because of Mr. Simpson.  
23 The misconduct of Mr. Simpson throughout this case and  
24 previously is -- has been established to your Honor's  
25 satisfaction sufficient to remove the company and cause JJ

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1 Arch tremendous damage.

2 So, I feel confident that when we make our  
3 competing motion for his removal that it will be amply  
4 supported.

5 THE COURT: You can make whatever motion you want.  
6 You make a good point. Look, what I'm going to do on this  
7 motion is I'm going to deny the branch relating to what I  
8 consider a motion to reconsider my prior order and defer  
9 ruling on the JJ Arch portion of the motion pending an  
11:15:33 10 evidentiary hearing.

11 I'm going to leave you with Mr. Scarlet to talk  
12 about the schedule while I talk to these next folks, but  
13 that's my resolution of the two motions today.

14 I appreciate hearing from you all. It's been a  
15 well-fought battle, so thank you very much and we'll see you  
16 next time.

17 MR. ALTMAN: Thank you, your Honor.

18 Just with respect to in the order that you enter  
19 make clear whether or not you're granting or denying my  
11:16:02 20 request for a stay to the extent it permits Oak to go  
21 forward --

22 THE COURT: Is there a request for a stay in the  
23 motion?

24 MR. ALTMAN: No.

25 THE COURT: Well, if you're making -- I'm not going  
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1 to stay it -- I'm not going to stay the continuing --  
2 there's already an order in place in November, which nobody  
3 has asked me to stay. If what you're saying is now having  
4 denied what I consider your request to renew that motion,  
5 you want me now to go back and stay an order that I put in  
6 place in November the answer is no, I'm not going to do  
7 that.

8 MR. ALTMAN: That's all I need to know. Thank you.

9 THE COURT: All right, thanks, everyone.

11:16:43 10 MR. ALTMAN: Thank you.

11 MR. SCHWARTZ: Thank you.

12 \* \* \* \*

13 (Certification on next page)

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3 C E R T I F I C A T I O N

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5 INDEX NO. 158055/23 JEFFREY SIMPSON et al vs.

6 JARED CHASSEN et al CHASSEN

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